

THE POSSIBILITY OF ADOPTING OTHER EXCEPTIONS TO THE INDEPENDENCE PRINCIPLE IN LETTERS OF CREDIT IN THE PHILIPPINES*

*Mary Jean M. Kuda***

ABSTRACT

The purpose of this thesis is to identify other exceptions to the application of documentary letters of credit other than the fraud exception rule as recognised by the courts in the US, England, Australia and Singapore, with special focus on their adaptability in the Philippines. After examining various cases, three other exceptions have emerged namely, unconscionability, illegality and nullity of documents.

The fraud rule is the only recognised exception in a letter of credit transaction. Only the existence of fraud could hinder payment to the beneficiary of a letter of credit. With the payment function of a letter of credit, the beneficiary is assured of payment. Any activity or transaction on the part of the beneficiary, absence of fraud, will not affect the letter of credit transaction. Consequently, beneficiaries are overly protected from non- payment while buyers/applicants are left with limited recourse.

This research examines other exceptions that could further be alleged by the applicant to stop the beneficiary from drawing on the credit. Upon further research, adapting the three other exceptions would promote balance of rights between the applicant and beneficiary as it would compensate for the rigid application of the independence principle. As a result, it had been concluded that the three other asserted exceptions could be adapted in the Philippines following the decisions arrived at or guidelines provided by the courts in the US, England, Australia and Singapore.

Keywords: Letter of credit, Independence Principle, Unconscionability, Illegality, Nullity, Fraud

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** Graduate student of Master of Laws program in Business Laws (English Program), Faculty of Laws, Thammasat University.

บทคัดย่อ

วัตถุประสงค์ของบทความนี้คือการศึกษาค้นคว้าข้อกเว้นอันออกหนีอิจฉาจากหลักการฟ้องลวง (Fraud) ในการชำระราคาตามเดตเตอร์อฟเครดิต ซึ่งเป็นหลักข้อกเว้นอันเกิดขึ้นโดยคำพิพากษาของศาลในประเทศสหรัฐอเมริกา ประเทศสหราชอาณาจักร ประเทศออสเตรเลีย และประเทศสิงคโปร์ โดยมุ่งเน้นศึกษาถึงการปรับใช้หลักข้อกเว้นการชำระราคาตามเดตเตอร์อฟเครดิตในประเทศไทยเป็นส่วนของการศึกษาที่สำคัญที่สุด ซึ่งการฟ้องลวงในประเทศไทยมีลักษณะเป็นไปได้แก่ หลักการเข้าทำสัญญาในพุทธิการณ์ที่ไม่สามารถปกป้องผลประโยชน์ของตนเองได้ (Unconsciousability) หลักความไม่ชอบด้วยกฎหมาย (Illegality) และหลักความล้มเหลวของเอกสาร (Nullity of documents)

หลักการนี้ถือเป็นข้อกาวน์เดียวที่มีในการห้ามราคามาเลตเดอร์อฟเครดิต กล่าวคือเมื่อเหตุข้อกาวน์ที่จะปฏิเสธไม่ได้จ่ายเงินแก่ผู้ซื้อประทับใจน้ำดามาเลตเดอร์อฟเครดิตที่ต่อเมื่อมีการห้ามลดเกิดขึ้น พฤติการณ์อื่นใดก็จะทำให้ฝั่งผู้รับประทับใจนั้น หักกิจให้กระทำโดยนัยดัก ย่อมไม่กระบวนการที่เกิดขึ้นนี้สิทธิการได้รับห้ามราคามาเลตเดอร์อฟเครดิตจะนั้น ฝั่งได้รับประทับใจน้ำดามาเลตเดอร์อฟเครดิต ได้รับความคุ้มครองอย่างสูง

คำสำคัญ: เลดเตอร์อฟเครดิต, หลักความเป็นอิสระ, หลักการเข้าทำสัญญาที่ไม่สามารถปกป้องผลประโยชน์ของตนเองได้, หลักความไม่ชอบด้วยกฎหมาย, หลักความเสียเปรียบของอุตสาหกรรม, หลักการดึงอ่อนดึง

Introduction

A construction company located in Makati, Philippines and a steel supplier situated in the United States entered into a sale and purchase agreement of construction materials. To facilitate the sale, the construction company applied for a letter of credit at X Bank in favor of the supplier. When the shipment reached the Philippines however, the construction materials were of low quality and different from that agreed upon. The construction company filed an injunction case against X Bank to stop paying on the credit. Then X Bank invoked the independence principle¹ whereby it argued that it is not obliged to inspect the materials since the contract of sale is separate and distinct from its credit undertaking. The injunction was denied. Consequently, the steel supplier was able to draw on the credit.

Applying the current laws and principles on letters of credit in the Philippines, the judgment is correct. Absent any fraud in the credit transaction, X Bank could not be stopped from paying the supplier based solely on the quality of the construction materials. Since the supplier presented valid documents on its face, the bank has no reason to withhold payment. However, on a layman's point of view, something is not right. Equity and justice dictate that the steel supplier is not entitled to be paid at all or for the same contract price at least. While the construction company can sue the steel supplier based on the breach of contract, due to distance and jurisdictional issues, filing an injunction order against the issuing bank which is located also in the Philippines is the most convenient remedy to pursue. But with the limited grounds provided, chances are high that injunction orders will not be entertained by the courts due to the security afforded by the independence principle.

The principle of independence requires that the bank pays the seller once the required documents are presented to it regardless of any breach of the underlying contract. Hence, the beneficiary has power to demand that the issuing bank honor the credit obligation after upholding the conditions of the credit.

“Assurance of payment plays an important role when the buyer asks the seller to open a letter of credit, but does the seller have an absolute right to payment?”² It seems that the answer to this question is on the negative. There is one traditionally recognised exception to the independence principle and that is fraud exception or otherwise referred to as, the fraud rule. Under this rule, the issuing bank can refuse to pay the credit when fraud is involved.

In the Philippines, the independence principle is adhered to in order to determine whether the issuing bank can refuse payment to the beneficiary or not.

¹ Referred to as the autonomy principle in countries such as the US, England, Australia and Singapore and referred to as independence principle in the Philippines hence, will be used interchangeably depending on the country being referred to.

² Ronald J. Mann, ‘The Role of Letters of Credit in Payment Transactions’ (2000) 98 Mich L Rev

In most cases, the court rules on the negative as the independence principle dictate that the beneficiary is entitled to payment without looking beyond the face of the submitted documents and regardless of the accomplishment of the underlying contract. Similarly, the existence of fraud is the only exception to this principle. However, even the application of the fraud rule is limited to fraud that affects the independent purpose or character of the credit and not fraud under the main contract.³ This rigid and limited application of independence principle has caused harsh results.

Over time, common law courts have asserted other possible scenarios that negate the application of the autonomy principle.

Unconscionability Exception

Unconscionability refers to a “condition in which claim of beneficiary to draw under the credit or bank guarantee is so affected with bad faith that courts decides to prevent bank from payment in absence of fraud or forgery”.⁴ Many legal authorities and scholars believe that unconscionability can be used as a defence.⁵ In broad sense, however, unconscionability is only possible in the absence of good faith.⁶

Among other common law countries, Singapore is the first that has adopted this exception. Its development has been a case of trial and error. In an earlier case of “*Dauphin Offshore Engineering & Trading Pte Ltd v The Private Office of HRH Sheikh Sultan bin Khalifa bin Zayed Al Nahyan*,”⁷ the court opined that circumstances of each case determine as to what kind of situation would constitute unconscionability and that there is no pre-determined categorisation.⁸ But it was recommended in “*Raymond Construction Pte Ltd v Low Yang Tong*”⁹ that the “idea behind unconscionability involves unfairness, as distinct from dishonesty or fraud, or conduct of a kind so reprehensive or lacking in good faith that a court of conscience would either restrain the party or refuse to assist the party. Mere breaches of contract by the party in question would not by themselves be unconscionable.” In “*McConnell Dowell Constructors (Aunt) Pty Ltd. v Sembcorp Engineers and Constructors Pte. Ltd.*”,¹⁰ the court opined

³ (2004) G.R. No. L-100831

⁴ Eliah Peter Ellinger and Dora Neo, *The Law and Practice of Documentary Letters of Credit* (Hart 2010) 169

⁵ John Lowry, Commercial Law: Perspective and Practice Lexis Nexis, p. 175.

⁶ *Dauphin Offshore Engineering & Trading Pte Ltd v The Private Office of HRH Sheikh Sultan bin Khalifa bin Zayed Al Nahyan* (2000) 1 SLR 657

⁷ *Dauphin Offshore* (n 80).

⁸ *ibid*

⁹ (Suit 1715/95, 11 July 1996, unreported)

¹⁰ (2002) 1 SLR 199

that “all unconscionability cases must involve an element of unfairness.”¹¹

Finally, in “*GHL Pte Ltd v Unitrack Building Construction Pte Ltd & Another*,¹² the court put to rest as to any doubt as to the existence of another exception to the independence principle. In this case, the Plaintiff GHL, a property developer and Defendant Unitrack entered into a building contract. Pursuant to the contract, Unitrack provided GHL with a performance bond equivalent to 10% of the contract price. As the construction failed to finish on time, Unitrack commenced an action for injunction against GHL to withhold payment on the remaining amount of the performance bond. The court found GHL is not allowed to call on the entire amount of the performance bond.

Being a trailblazer on the matter, Singapore has clearly laid out guidelines for the application of unconscionability. In “*Astrata (Singapore) Pte Ltd v Tridex Technologies Pte Ltd and Anor*”,¹³ Mr. Justice Pillai laid down the applicable principles distilled from various cases¹⁴ as follows:

- “(a) Whether there is unconscionability depends on the facts of each case. There is no pre-determined categorisation.
- (b) In determining whether a call on a bond is unconscionable, the entire picture must be viewed, taking into account all the relevant factors.
- (c) The concept of unconscionability involves unfairness, as distinct from dishonesty or fraud, or conduct of a kind so reprehensible or lacking in good faith that a court of conscience would either restrain the party or refuse to assist the party.
- (d) While in every instance of unconscionability there would be an element of unfairness, the reverse is not necessarily true. Unfairness per se does not constitute unconscionability.

¹¹ *ibid*

¹² (1999) 4 SLR 604 accessed January 6, 2017

<<http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/cases-in-articles/equity-and-trusts/1511-ghl-pte-ltd-v-unitrack-building-construction-pte-ltd-and-another-1999-4-slr-604-1999-sgca-60>>

¹³ (2010) SGHC 250 accessed April 21, 2017 <<http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/high-court-judgments/14406-astrata-singapore-pte-ltd-v-tridex-technologies-pte-ltd-and-another-and-other-matters-2010-sghc-250>>

¹⁴ *Bocotra Construction Pte Ltd & Others v Attorney General* [1995] 2 SLR(R) 262 at [278] (“Bocotra”); *GHL Pte Ltd v Unitrack Building Construction Pte Ltd & Another* [1999] 3 SLR(R) 44 at [51] (“GHL”); *Dauphin Offshore Engineering & Trading Pte Ltd v The Private Office of HRH Sheikh Sultan bin Khalifa in Zayed Al Nahyan* [2000] 1 SLR(R) 117 (“Dauphin”) and *Eltraco International Pte Ltd v CGH Development Pte Ltd* [2000] 2 SLR(R) 180 (“Eltraco”)

- (e) In intervening in a call on an on-demand bond/guarantee, the court is concerned with abusive calls on the bonds.
- (f) Mere breaches of contract by the party in question would not by themselves be unconscionable.
- (g) It is important that the courts guard against unnecessarily interfering with contractual arrangements freely entered into by the parties. The parties must abide by the deal they have struck.”¹⁵

In England, the first case on unconscionability is “*Elian and Rabbath v Matsas and Matsas*”¹⁶ in which the Court of Appeals ruled that in “system of performance guarantees, there might be circumstances where the bad faith of a party entitles court to erode principle of independence by granting injunction in order to prevent an irrevocable injustice”.¹⁷ Since the preceding case centered on a performance bond, Lord Jenning further clarified that similar to a letter of credit, courts should strictly enforce the terms of a bank guarantee and its implementation should not be prevented by means of injunction unless circumstances may arise warranting interference by injunction.¹⁸

In “*TTI Team Telecom International Ltd v Hutchison 3G UK Limited*”¹⁹, the court held that as a reason for superseding the autonomy principle in performance bonds under English law, unconscionability can be recognised as a defence for payment in the UK.²⁰

The above legal arguments notwithstanding, unconscionability has not attained recognition to place it on the same footing as fraud. Further, it seems that the English courts have taken a silent position in terms of its recognition as a defence for payment in international letter of credit transactions just like bank guarantees and performance bonds.²¹

Clearly, there has been no strict guideline on the applicability of the concept of unconscionability in England. Apparently, it is resorted to whenever fraud, duress, or illegality could not be clearly established.

¹⁵ (2010) SGHC 250

¹⁶ [1966] 2 Lloyds Rep 495

¹⁷ *ibid*

¹⁸ *ibid* 172

¹⁹ [2003] 1 All ER 914

²⁰ *ibid*

²¹ Hamed Alavi, ‘Comparative Study of Unconscionability Exception to the Principle of Autonomy in Law of Letter of Credits’ [2016] 12 AUDJ 102

In Australia, the unconscionability exception was given a legislative effect.²² Unlike in the US where the Uniform Commercial Code expressly acknowledges only fraud and forgery.²³

Illegality Exception

The Uniform Customs and Practices for Documentary Credits²⁴ does not provide any guidance as to the formulation of other exception. Consequently, each jurisdiction is open to develop their respective exceptions. Different jurisdictions as may be observed in the proceeding discussion has adopted the illegality exception albeit different reasons or authority.

Further, some academics²⁵ in this area are in favor of the adoption of the illegality exception to stop payment under the credit. According to Agasha Mugasha, “a letter of credit will not be enforced if its effect is to perpetuate or carry out an illegal scheme or contravene public policy.”²⁶

The English courts have recognized the application of the illegality exception as early as 1765 in “*Pillans & Rose v Van Mierop & Hopkins*”.²⁷ In this case, a certain White drew a bill of exchange on plaintiffs in favor of a certain Clifford. The plaintiffs confirmed the credit on condition that defendants Van Mierop & Hopkins would guarantee said bills. The defendants informed plaintiffs that it refused to pay the bill because White stopped the payment. The court pronounced that “if there be a turpitude or illegality in the consideration of a note, it will make it void, and may be given in evidence; but here nothing of that kind appears, nor anything like fraud in the plaintiffs”.²⁸ While it is more of a contract case, the court further stated that “all letters of credit relate to future

²² Australian Consumer Law Act of 2010, s 20 (1) originally Australia Trade Practices Act 1974, s 51 AA, (1) “A person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the unwritten law from time to time.”

²³ s 5-109

²⁴ International Chamber of Commerce’s set of rules on documentary credits which is used for letter of credit transactions worldwide

²⁵ See Gerald T McLaughlin ‘Letters of Credit and Illegal Contracts: The Limits of the Independence Principle’ (1989) 49 Ohio St L J 1197; Nelson Enonchong, ‘The Autonomy Principle of Letter of Credit: An Illegality Exception?’ (2006) LMCLQ 404; Roger J Johns and Mark S Blodgett ‘Fairness at the Expense of Commercial Certainty: The International Emergence of Unconscionability and Illegality as Exceptions to the Independent Principle of Letters of Credit and Bank Guarantees’ (2011) 31 N Ill U L R 297; Michelle Kelly-Louw ‘Illegality as an exception to the autonomy principle of bank demand guarantees’ (2009) 42 Comp & Int’l L J S Afr 339

²⁶ The Law of Letters of Credit and Bank Guarantees (2003) The Federation Press

²⁷ [1765] 3 Burr 1664

²⁸ ibid

credit and does not include an old debt as in this case".²⁹ In "*Mahonia Ltd. v J. P. Morgan Chase Bank*",³⁰ the court held that a letter of credit resulting from an illegal underlying transaction would also be deemed illegal. In this case, the letter of credit in question was issued by Morgan Chase upon request of Enron Corporation (Enron) pursuant to a facility or a swap agreement. Then Morgan Chase alleged that Enron's purpose in executing said agreement was to secure a loan without showing it in its accounts hence, illegal under the securities law. The court was confronted with the issue, among others, of whether or not Morgan Chase is entitled to refuse payment on the credit it has prior knowledge of established or obvious fraud committed by Enron to which the court ruled in the affirmative. Then Mr. Justice Colman concluded that "the letter of credit could not be enforced against the bank on the basis that in certain circumstances the illegality of the underlying contract can taint the letter of credit and thereby render it unenforceable".³¹ However, in this case, it was found that the underlying transaction was not illegal because Enron's accounting was not in violation of the US security law. After failure to seek summary relief, Plaintiff Mahonia elevated the case to the English Commercial Court for a full trial. Then Justice Cook agreeing Justice Colman's view concluded that "letters of credit could be tainted by illegality of the underlying contracts and thus unenforceable despite of the autonomy principle".³² While the application of the illegality principle has no yet fully established in England, the above cases prove that when the facts and conditions of the case called for its application, the courts do not hesitate to apply it.

In the US, the Revised UCC³³ has not explicitly provided for a separate illegality exception. However, Professor McLaughlin argues that although there is no clear provision about the illegality exception, the courts are still left open to accept an illegality exception because the law does not explicitly dismiss its application.³⁴ His argument is based on a provision of the UCC which provides that "the statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified in Article 5".³⁵

²⁹ *ibid*

³⁰ [2003] EWHC 1927

³¹ *ibid*

³² [2003] EWHC 1927

³³ a 5-109

³⁴ G T McLaughlin, 'Exploring Boundaries: A Legal and Structural Analysis of the Independence Principle of Letter of Credit Law' (2002) 119 BLJ, 527-528

³⁵ a 5-103(b)

There are attempts by litigants to allege illegality of the underlying contract as a ground to enjoin payment but US courts have refused to allow it.³⁶ In “*KMW International v Chase Manhattan Bank NA*”³⁷, KMW and Khuzestan Water and Power Authority (Iran) entered into a purchase order of telephone poles. Thereafter, an irrevocable credit was issued by Chase Bank upon KMW’s request. The political turmoil in Iran went in between the fulfillment of the purchase order. Due to nonperformance, KMW secured a temporary restraining order to enjoin Chase Bank from paying on the ground that any demand made on the credit is “of necessity would be false and fraudulent”. While the court acknowledged that “there is nothing in the UCC or the UCP which excuses an issuing bank from paying a letter of credit because of supervening illegality, impossibility, war or insurrection”,³⁸ it nevertheless, denied the injunction against payment on the ground that the political turmoil in Iran is not sufficient reason for Chase Bank not to perform its obligation under the terms of credit.

Further, considering illegality in the underlying contract under fraud or forgery to use it as a defence under UCC has failed on the ground that the absence of any provisions in the UCC for an illegality defence means that illegality in the underlying contract has not been recognised as a separate defence in the US.³⁹

Nullity Exception

The nullity exception applies to circumstances where the beneficiary did not commit fraud, but the documents are null because the same have been either forged or executed without authorization.⁴⁰ It pertains to the attributes of the documents the beneficiary submitted to the bank. If established, the bank may refuse payment due to the nullity. A null document is nothing but a scrap of paper.

Singapore is the first common law country to admit the nullity exception which clearly is a deviation from that endorsed by the English courts. The application of the nullity exception has been demonstrated in “*McConnell Dowell Constructors (Aust) Pty Ltd. v Sembcorp Engineers and Constructors Pte. Ltd.*”⁴¹ In this case, Standard Charter rejected payment in favor of the beneficiary-seller because the seller’s freight forwarder does not exist hence, the airway bills supposedly issued by the latter is a forgery. The court, in upholding the nullity

³⁶ *New York Life Assurance Company v Hartford National Bank and Trust Company* (1977) 173 Conn 492; *Prudential Insurance Company of American v Marquette National Bank of Minneapolis* (1976) 419 F Supp 734

³⁷ *KMW International v Chase Manhattan Bank NA* (1979) 606 F 2d 10

³⁸ (1979) 606 F 2d 10

³⁹ *Western Security Bank NA v Superior Court* (1993) 25 Cal Rptr 2d 908

⁴⁰ Richard Hooley, ‘Fraud and Letters of Credit: Is there a Nullity Exception?’ (2002) 61 CLJ 279

⁴¹ [2002] 2 SLR 155

exception, ruled that “the negotiating/confirming bank is not obliged to pay if it has established within the seven-day period that a material document required under the credit is forged and null and void and notice of it is given within that period.”⁴²

In England, Lord Diplock in “*United City Merchant (Investment) Ltd v Royal Bank of Canada*”⁴³ left open the nullity question by saying:

“...I would prefer to leave open the question of the rights of an innocent seller/beneficiary against the confirming bank when a document presented by him is a nullity because unknown to him it was forged by some third party; for that question does not arise in the instant case...”⁴⁴

This open ended question has been addressed in “*Montrod Ltd v Grundkotter Fleischvertriebs GmbH*”⁴⁵ where the court, through Mr. Justice Potter, ruled that the English law did not provide whether to treat the nullity exception as a separate ground or as an extension of the fraud exception. In this case, the parties entered into sale contract of frozen pork secured by a documentary credit issued by a third-party defendant bank. Pursuant to the terms, an inspection certificate must be issued and signed by Montrod before shipment. As the inspection certificate was issued but was not signed by Montrod, the latter refused to reimburse the bank.

It is also believed that a nullity exception would not be beneficial to the certainty of letters of credit because it will require the issuing bank to look beyond the face of the documents which it lacks skills to do.⁴⁶ However, the nullity exception may not be totally rejected in English law as to do so may encourage circulation of forged documents.⁴⁷

Presently, the English courts have yet to decide a case applying the nullity exception.

Adoptability in the Philippines

Considering the foregoing case discussions, it only proves that when the terms are drawn properly and conditions are met, other exceptions to the autonomy principle maybe admitted without destroying the integrity of letters of credit. The courts may adopt these other asserted exceptions to mitigate the harshness of the

⁴² [2003] 1 SLR 597, 33

⁴³ [1983] 1 AC 168

⁴⁴ [1983] 1 AC 168

⁴⁵ [2002] 1 ALL ER (Comm) 257

⁴⁶ Mark Williams, ‘Documentary Credits and Fraud: English and Chinese Law Compared’ Journal of Business Law 155 (2004)

⁴⁷ Richard Hooley, “Fraud and Letters of Credit: Is there a Nullity Exception?” 61 (2002) Cambridge LJ 181

application of the independence principle.

In applying the guidelines, the courts have to be cautious keeping in mind the decisions in the various cases decided by the Singapore courts when it comes to the application of the unconscionability and nullity exceptions and the English courts for the illegality exception. These guidelines are helpful in navigating through the complexities of adopting other exceptions to the independence principle.

To balance the rights of all parties in a letter of credit transaction and to adapt to the changing business landscape, it is therefore recommended to:

1. Make it a part of the domestic law

The Philippine Code of Commerce has been rendered obsolete by the modern commercial transactions. The provisions on letters of credit do not even address the issues brought about by the changing business landscape. Further, the UCP is silent as to adapting exceptions to the independence principle. In fact, the issue on whether or not to allow exceptions is left to the discretion of each country. It is therefore, sound and practical to amend the Code of Commerce in order to make the exceptions a part of the domestic law to the following effect:

"If an applicant claims that a required document is null or forged or materially fraudulent or transaction is unconscionable or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons."

A bill maybe passed in Congress which seeks to amend or revise the provisions on letters of credit as contained in the Code of Commerce. The proposed amendment must be approved by both the House of Representatives and the Senate along with the signature of the President. Afterwards, the bill can become a law known as a Republic Act.

2. Recognizing the vital function of the banks

In a letter of credit transaction, the banks receive the documents required under the credit regardless of the fact that one or some of the documents are forged or issued without proper authorization. In doing so, banks encourage the proliferation of forged or unauthorized documents within the commercial arena. This practice runs counter with the fiduciary duty of banks which is to observe the highest degree of care and meticulousness.

As banks play an important role in the letter of credit system, their role must not be limited to checking the documents presented before it. While it is not practical to make the bank responsible to check whether the goods are shipped in

accordance with what has been agreed upon, it is also not a sound practice for the banks to take the documents presented before it on its face value alone. Banks should be able to develop a system or way on how to make sure that the documents presented before them are genuine or properly secured.

3. Take judicial notice of the cases decided by the English and Singaporean Courts

While it may take a while to amend the law, the Philippine Supreme Court can take judicial notice of the ruling of the English courts pertaining to illegality exception and the Singapore courts pertaining to the unconscionability and nullity exceptions. To summarize, the conditions that would permit unconscionability exception are: a) the facts of the case must be carefully considered, and b) existing contractual agreements freely entered into by the parties must be respected. Whereas for illegality exception, the conditions are: a) the illegal facts must be clearly established, and b) the illegality must be known to the other party.

The Philippine Courts can add other conditions as it may deem fit based on the local landscape. The reason being is that some conditions set by other foreign jurisdictions may not be suitable when applied domestically. Like for instance, one of the approved conditions set by English courts under the illegality exception is that the illegality must be known to the other party. The Philippine courts could further clarify it by defining at what point knowledge of the beneficiary would make him not entitle to payment. Will it be knowledge at the time of procuring the required documents or knowledge at the time of submission of the required documents to the bank? Further, the Philippine courts may use such guidelines arrived at by the foreign courts as a model in order to formulate and develop other exceptions.

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